

### REMARKS

Claims 18 to 21 are added, and therefore claims 8 to 21 are pending.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claims 8, 10, 11, and 13 to 16 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,534,954 ("Plett").

As regards the anticipation rejections of the claim, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejection, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

The Plett reference does not identically disclose (or even suggest) the features of claim 8, which provides for "determining a first state of charge value during a load period of the battery on the basis of an estimated open-circuit voltage; determining a second state of charge value during a rest period of the battery following the load period on the basis of a measured open-circuit voltage; comparing the first state of charge value to the second state of charge value; and detecting acid stratification when a defined deviation of the first state of charge value from the second state of charge value is exceeded."

The Office conclusorily asserts that the "Summary of the Invention" section of Plett discloses the features of claim 8. However, as this section indicates, Plett only states: [State of Charge (SOC) systems] "do not take battery temperature as a parameter in its

SOC estimation. Other embodiments . . . [do] use battery temperature as a parameter to adjust its SOC estimation. This is important to keep the accuracy of the SOC estimation from being affected by changing temperature.” Plett at col. 6, line 67 to col. 7, line 5. A temperature-independent SOC estimation checked by a temperature-dependent estimation does not identically disclose (or even suggest) the features of “determining a second state of charge value *during a rest period* of the battery following the load period *on the basis of a measured open-circuit voltage*.”

In fact, the background section of Plett states the following:

An open-circuit voltage measurement may be performed to test the SOC of the battery. Although the relationship between the open circuit voltage and the SOC is non-linear, it may be determined via lab testing. Once the relationship is determined, the SOC can be determined by measuring the open circuit voltage. However the measurement and estimation are accurate only when the battery is at a steady state, which can be achieved only after a long period of inactivity. *This makes the open-circuit voltage technique **impractical** for dynamic real time application.*

Plett at col. 2, lines 10 to 19 (emphasis added). This clearly teaches away from methods of determining SOC “by measuring the open circuit voltage.” Aside from characterizing it as “impractical,” Plett makes no mention of measuring an open-circuit voltage, nor of “determining a second state of charge value during a rest period of the battery following the load period on the basis of a measured *open-circuit voltage*.”

For at least these reasons, claim 8 is allowable, as are its dependent claims.

Claim 11 includes features like those of claim 8, and are therefore allowable at least the same reasons, as are its dependent claims.

Claims 9, 12, and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable in view of Plett, and in further view of U.S. Patent Application No. 2003/0146737 (“Kadouchi”).

Claim 12 includes features like those of claim 8, and is therefore allowable, since Kadouchi does not cure -- and was not asserted to cure -- the deficiencies of Plett, as explained above. Claims 9 and 17 depend from claims 8 and 12 respectively, and are therefore allowable for at least the same reasons.

New claims 18 to 21 do not add any new matter and are supported by the present application, including the specification. Claims 18-19 and 20-21 respectively depend

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from claims 11 and 12, and are therefore allowable for the same reasons as their respective base claims.

Accordingly, claims 8 to 21 are allowable.

### CONCLUSION

In view of the above, it is respectfully submitted that all of the presently pending claims 8 to 21 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since they have been obviated. Since all issues raised have been addressed, an early and favorable action on the merits is respectfully requested.

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Respectfully Submitted,

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